

# Comment

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Submitted on behalf of:

**National Honey Board**

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**Longmont, CO 80501-6045**

The 2002 Farm Bill (P.L. 107-171) amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) on May 13, 2002. The amendment requires the USDA to promulgate regulations exempting producers of organic products from paying assessments collected under commodity promotion laws including the Honey Research, Promotion and Consumer Information Act. The proposed regulation was published for comment on April 26, 2004. Accordingly, in the interest of reducing impacts on honey industry members, including organic producers, as well as facilitating fair and consistent application of the final regulation, the National Honey Board is making comment herewith.

It is the Board's understanding that as proposed, the rule exempts any person that "produces" and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law. Several items should be reaffirmed regarding these exemptions:

- The impact will not be retroactive
- To be eligible, applicants must be subject to an assessment under the program
- The commodity must be produced on a "certified organic farm" as defined
- "Produce" means to grow or produce food... or to receive food... and alter that product by means of ...processing. Producers, handlers, first handlers, processors, importers, exporters may be eligible if they meet the definition of "produce" (and meet the other requirements for eligibility)

Under the current Honey Order, first handlers who are not also producers ("producer-packers") would not be eligible for exemption because they are not subject to assessments. Importers would be eligible only if they both "receive" honey *and* "alter by means of ... processing." As such, importers who import bulk honey and process/pack it themselves would be eligible for exemption so long as their entire product line was 100 percent organically certified. Importers who sell bulk product to a handler for further processing or import finished goods would not be eligible for exemption regardless of whether the importer's entire product line was certified organic because the importer would not be defined as a "producer" in these cases. The example in the Supplementary Information used as a guideline for these assertions included the following; an importer who imports 100 percent organic boxed beef and

sells it to another party is not eligible for exemption because the importer is not a producer as defined in the rule.

The Board understands that to apply for exemption a person would submit an application to the Board annually. The application would include basic company information plus a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990. In addition, the applicant would provide a signed certification that they meet all of the requirements specified for exemption.

The Board would be required to approve the exemption and notify the applicant within 30 days or notify of the reasons for disapproval. This would be similar to exemptions the Board processed in the past (since discontinued) for producers of fewer than 6,000 pounds. These certificates, along with certifying statements from a certifying agent, would be tracked and renewed on an annual basis. Handlers would receive a copy of the exemption certificate. This would justify non-collection of the assessment during a purchase transaction.

For any importers that may be approved for exemption, the rule proposes that the *Board* issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule classification valid for 1 year. Entries against this HTF would be exempted from the assessment by U.S. Customs.

The rule estimates impact to 10 honey producers and 0 importers, resulting in an assessment loss to the Board of \$11,174 (from producers) annually.

**The Board respectfully requests that the following revisions to the proposed rule (and Honey Research, Promotion and Consumer Information Act) be reviewed and implemented:**

1240.20 (a) **Add** a definition for “organic producer” – a person who produces and markets solely 100 percent organic products and does not produce any non-organic or conventional products as defined under 7 U.S.C. 6502 Sec. 2103. **Define** “produce” as stated in the amendment and supplemental information for the purposes of organic production

1240.42 (c) **Do not revise** the language “under this section” as currently proposed, to “paragraphs (a) and (b)...” The new paragraph(s) (d) and (e) should be included since a certified organic producer/producer-packer/importer may lose certification during a year or handle, process or import non-organic products during an exempted year for which they should then be liable to notify and pay assessments to the Board.

(d) **Modify** last sentence (A person is a producer, first-handler, or producer-packer.); this should not include “first handler” as a “person.” First handlers (unless they are also producers and as such are producer-packers) are not subject to assessments under the Order and therefore do not qualify for organic exemption.

(e) **Remove this item.** Why itemize importers in this separate paragraph? Suggest you add “importer” to item (d) above – they still have to meet the definitional and functional criteria as explained in the supplemental information.

1240.114 (a) **Modify** - Since many of the organic producers are likely to be already exempt for *de minimis* reasons and since entities exempt by virtue of size do not have to apply for exemption under the current honey Order, add to the first sentence “Unless already exempt pursuant to 1240.42 (a) or (b), to obtain a Certificate of Exemption for organic honey...” **Also**, application request language does not include required components including company name and address, phone, fax — these should be added to the text.

(c) **Modify** - Since producers of organic honey may also sell to producer-packers, importers and exporters, the requirement to provide Certificate documentation to these entities should also be itemized (unless the word “handler” is considered to cover all these cases)

(d) **Modify** - Application request language from an importer does not include required components including applicant name, company name and address, phone, fax — these should be added to the text. **Also**, by what process does the *Board* issue an HTS classification to the *importer* (doesn't U.S. Customs maintain the classifications — likely there would be one HTS for any organic honey importer to use?)

1240.115 (c)(1) **Add the phrase** “or is exempt pursuant to 1240.42” at the end of the sentence.

(c)(i) **Change** to “Such producer-packer is exempt pursuant to 1240.42 and 1240.114.”

1240.120, 1240.121, 1240.122 all need to be **updated** with the word “producers” in each case where “first handlers, producer-packers, importers or any person who receives and exemption...” appears. In the 1998 amendments to the Act (excerpt Sec. 9 - below), producers became subject to reporting and recordkeeping requirements.

(f) Inspection; Books and Records.--

(1) In general.--To make available to the Secretary and the Honey Board such information and data as are necessary to carry out this Act (including an order or regulation issued under this Act), a handler, importer, **producer**, or producer-packer responsible for payment of an assessment under this Act, and a person receiving an exemption from an assessment under section 7(e)(4), shall--

(A) maintain and make available for inspection by the Secretary and the Honey Board such books and records as are required by the order and regulations issued under this Act; and

(B) file reports at the times, in the manner, and having the content prescribed by the order and regulations, which reports shall include the total number of bee colonies maintained, the quantity of honey produced, and the quantity of honey and honey products handled or imported.

**Finally, the Board requests that the USDA amend the current Organic Rule to include the apicultural standards as proposed by the honey industry in 2001.** It was the industry's understanding that apiculture standards were to be promulgated within 18 months of Organic Rule publication. It is unclear how current regulations and certification are fairly and correctly applied to honey by the Department without specific guidelines that apply to apiculture.

Questions regarding this Comment may be directed to:

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Thank you for your attention to these comments.

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Gene Brandi, Chairman  
National Honey Board